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In re Application	:
Wiley, et al.	:
Application No. 10/030,187	:
Filed: February 4, 2002	:
Atty Docket No. 00219/US	:
	: DECISION ON APPLICATION
	: FOR PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 C.F.R. §1.705)," filed March 4, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from twenty-eight (28) days to thirty-three (33) days.

The application for patent term adjustment is **DISMISSED**.

On December 18, 2003, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is twenty-eight (28) days. On March 4, 2004, Applicants timely¹ submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is thirty-three (33) days.

¹ Applicants filed the instant application for patent term adjustment together with the payment of the issue fee.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of twenty-eight (28) days based on an adjustment for PTO delay of thirty-three (33) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by applicants' delay of five (5) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8). The PTO delay of thirty-three (33) days has been reviewed and found to be correct. The adjustment of five (5) days is at issue.

The adjustment of five (5) days has been reviewed and found to be correct. The record reveals that applicants filed an Amendment and IDS via facsimile transmission on June 4, 2003. On June 9, 2003, applicants filed an "AMENDMENT OF INVENTORSHIP UNDER 37 C.F.R. 1.48(b)" and three IDS documents that were not filed on June 4, 2003. It is true that the June 9, 2003 submission contains a certificate of facsimile transmission dated June 4, 2003.² However, under 37 C.F.R. § 1.703(f), "the date indicated on any certificate of mailing or transmission shall not be taken into account" in the PTA calculation. See also Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 1239 OG 14 (Oct. 3 2000). Accordingly, the applicant delay of five (5) days for the filing of the "AMENDMENT OF INVENTORSHIP UNDER 37 C.F.R. 1.48(b)" and the IDS documents on June 9, 2003 was proper.

The correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **twenty-eight (28) days**.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e).

The application file is being forwarded to Group Art Unit 1624 to consider the "AMENDMENT OF INVENTORSHIP UNDER 37 C.F.R. 1.48(b)", filed June 9, 2003. See MPEP 1002.02(e).

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin Ferriter
per

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² However, it appears that the June 9, 2003 submission was not in fact filed via facsimile transmission, but rather by postal mail.